



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2013-21

Legistar #: 20130456

Board of Zoning Appeals Hearing: Monday, May 20, 2013 – 6:00 p.m.

Property Owner: Mesquite Creek Development, Inc.
3225 Cumberland Blvd., Suite 100
Atlanta, GA 30339

Agent: Parks F. Huff, Esq.
Sams, Larkin & Huff
376 Powder Springs Street
Suite 100
Marietta, GA 30064

Address: 2400 Delk Road

Land Lot: 07990 District: 17 Parcel: 0380

Council Ward: 1 Existing Zoning: CRC (Community Retail Commercial)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to reduce the side yard setback from 15' to 2' for an existing building encroachment. [§708.16 (H)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



2400 Delk Road



Between 2400 Delk Road (left) and 2390 Delk Road

Recommended Action:

Approval, with conditions. Parks Huff, attorney for the owner, is requesting a setback reduction for the existing building located at 2400 Delk Road. The subject property, zoned CRC (Community Retail Commercial), is 1.138 acres in size and contains a 2,363 square foot building operating as a Title Max. The property to the east is also zoned CRC and contains a RaceTrac gas station. To the west is Tim Horne's Hospitality Inn, which is zoned OI (Office Institutional).

The subject property (2400 Delk Road – Title Max) was formerly joined with the property to the west (2390 Delk Road – Tim Horne's Hospitality Inn). In June 2011, the property was improperly subdivided and sold to the property to the east (2466 Delk Road – RaceTrac) with the intention of combining the subject property with the RaceTrac property so the RaceTrac could be rebuilt. However, this subdivision created two zoning issues:

1. The (new) subject parcel (OI) was of a different zoning classification than the RaceTrac property (CRC).
2. The way the property was split during this subdivision placed the Title Max building within 2' of the newly created property line.



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In February 2013, a rezoning application was submitted and approved by City Council to rezone the subject property to CRC. The encroachment of the existing Title Max building was not addressed at the time of the rezoning because the intention at the time was to demolish the building as part of the reconstruction of the RaceTrac. However, at this time, the property owners wish to complete the original subdivision of property prior to demolishing the building, which will require a variance on the building's setback.

This setback encroachment was self-imposed by the owner of the property at 2390 Delk Road, when they arbitrarily divided the property without following proper platting procedure. The sale of this property to RaceTrac further complicated matters, which resulted in the need to rezone the property, and now the need for a variance. RaceTrac has apparently not attempted to resolve this issue by obtaining additional property, so as to provide the full 15 foot setback between the Title Max building and the property line. Neither have they proposed to demolish the Title Max building, which will eventually have to be done to accommodate their redevelopment.

Instead, they have chosen to request a variance, but have not identified a specific time frame as to how long the variance would be necessary. As there is no hardship resulting from the physical surroundings, shape, or topographical condition of the property, ***staff recommends approval of this variance with the following conditions:***

- 1. The variance shall be in effect for a period of one (1) year;***
- 2. After one (1) year, the site must come into compliance with the required 15 foot side yard setback by demolishing the building or by obtaining additional property.***